IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.955 OF 1999

M/s.Union Industries,
a partnership firm duly
regustered under the India
Partnership Act, 1932 and
having its office at 83,
Jail Road South Mumbai
400 009 .. Petitioner.

V/s.

1. Union of India
through the Joint
Secretary, Ministry of
Law, Justice and Company
Affairs, Aayakar Bhavan,
M.K. Road, Churchgate,
Mumbai - 400 020.

2. The Commissioner of
Customs (Import) having
his office at New Customs
House, Ballard Estate,
Mumbai - 400 038 .. Respondents.

Mr.Madhur Baya for the petitioner.

Mr.R.V. Desai, senior advocate with Mrs.Neeta Masurkar for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 14TH JUNE, 2006.

ORAL JUDGMENT (Per J.P. Devadhar, J.) :

1. The present writ petition is filed to challenge the validity of Section 95(ii)(b) of the Finance Act, 1998 as well as the three orders all dated 26th February, 1999 passed by the Commissioner of Customs rejecting the application of the petitioner under Kar

Vivad Samadhan Scheme, 1998 ('KVSS' for short). However, counsel for the petitioner at the final hearing of the present petition has given up the challenge to the constitutional validity of Section 95(ii)(b) of the Finance Act, 1998. Therefore, the only issue required to be considered in the present petition is whether the Commissioner of Customs (Import) was justified in rejecting the application made by the petitioner under KVSS, 1998.

2. The facts relevant for the present petition are that : in the year 1981, the petitioner imported three consignments of crude palm stearin and sought clearance by paying the duty under heading 1514/17 of the schedule to the Customs Tariff Act, 1975. As the Assessing Officer opined that the said goods are classifiable under heading 1508/13 of the schedule to the Customs Tariff Act, 1975, the petitioner filed a writ petition in the Delhi High Court bearing Writ Petition No.1961 of 1981. In the light of the interim order passed by the Delhi High Court in the aforesaid writ petition, the goods were allowed to be cleared on provisional basis by directing the petitioner to pay duty as per the classification claimed by the petitioner and on furnishing bond for the differential duty.

3. During the pendency of the aforesaid petition,

the Central Government introduced KVSS, 1998. With a view to avail the benefit of the said scheme, the petitioner filed three declarations in respect of the aforesaid goods which were imported in the year 1981 and cleared as per the interim order passed by the Delhi High Court. By the impugned orders all dated 26th February, 1999, the Commissioner of Customs (Import) rejected the application filed by the petitioner on the ground that no show-cause notice or demand notice were issued to the petitioner on the date of filing of the declarations. Challenging the aforesaid orders, the petitioner has filed present writ petition.

4. To complete the narration of facts, it may be noted that during the pendency of the present writ petition, the petitioner has withdrawn writ petition No.1961 of 1981 filed before the Delhi High Court, on 4th October, 2001.

5. It may be noted that in the case of NRC Limited V/s. Union of India, (Original Side Writ Petition No.2135 of 2001) decided on 31st March, 2006, in similar circumstances we have held that Commissioner was justified in rejecting the declarations made under KVSS. As in the case of NRC Limited (Supra) in the present case also there was no determination of duty on the date on which the declarations were filed under KVSS. The

contention of Mr.Baya that the endorsement made on the bill of entry gives rise to demand of duty and such a demand raised by endorsing the bill of entry is covered under Section 87(m)(ii)(a) of the Finance Act cannot be accepted because admittedly there was no assessment order passed in respect of the goods in question. The endorsement made on the bill of entry to the effect 'assessed provisionally' clearly shows that there was no final assessment order passed in the matter. It is not the case of the assessee that in the present case provisional assessment was passed as contemplated under Section 18 of the Customs Act. Admittedly, there was neither a regular assessment nor provisional assessment and the goods were cleared pursuant to the interim order passed by the Delhi High Court by estimating the disputed duty liability. In such a case, in the absence of determination of duty, the petitioner cannot avail the benefit of KVSS. In this view of the matter, in our opinion the issues raised in this petition are squarely covered by the decision of this Court in the case of NRC Limited (supra) against the petitioner.

6. Mr.Baya placed strong reliance on the decision of the Gujarat High Court in the case of Navdurga Calendering Works & Others V/s. Union of India & Others reported in 2005 (71) RLT 313 (Guj.). The ratio laid down therein has no application to the facts of the

present case because in that case determination of duty liability was not an issue. What is held in that case is that all persons who were in arrears as on 31st March, 1998 constituted one class and no discrimination could be made with reference to the demand notice or show-cause notice. In the present case, we have held that there is no determination of duty and consequently demand notice was not issued. Moreover, in the case before the Gujarat High Court there was a show-cause notice issued, whereas in the present case no show-cause notice has been issued. Thus, the decision of the Gujarat High Court in the case of Navdurga Calendering Works (supra) is distinguishable on facts.

7. For all the aforesaid reasons we do not find any infirmity in the order impugned in the petition.

8. Accordingly, the petition fails. Rule is discharged with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)